

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CALIFORNIA COMMUNITIES AGAINST
TOXICS, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 21-1024 (consolidated
with 21-1034)

STATE PETITIONERS’ NON-BINDING STATEMENT OF ISSUES

Pursuant to the Court’s Order of January 26, 2021, the State of California, by and through Attorney General Xavier Becerra, and the California Air Resources Board; the States of Delaware, Illinois, Maryland, New Jersey, New York, Oregon, Rhode Island, Washington, and Wisconsin; the Commonwealths of Massachusetts, Pennsylvania, and Virginia; the Cities of Chicago and New York (collectively, “State Petitioners”) submit the following non-binding, preliminary statement of issues to be raised in this case regarding the final rule of the United States Environmental Protection Agency (“EPA”), “Reclassification of Major Sources as

Area Sources Under Section 112 of the Clean Air Act,” 85 Fed. Reg. 73,854 (Nov. 19, 2020) (“Final Rule”).

1. Whether the Final Rule violates Section 112 of the Clean Air Act, 42 U.S.C. § 7412, or is arbitrary and capricious, because it allows major sources of hazardous air pollutants to be reclassified as non-major “area” sources and avoid congressionally mandated requirements applicable to major sources.
2. Whether EPA exceeded its statutory authority or acted unlawfully by allowing major sources of hazardous air pollutants to be reclassified as non-major “area” sources and avoid congressionally mandated requirements applicable to major sources.
3. Whether, even if major sources of hazardous air pollutants could reclassify as non-major “area” sources, EPA exceeded its statutory authority, acted unlawfully, or promulgated an arbitrary and capricious Final Rule by allowing such reclassification to automatically absolve a major source’s obligation to achieve the “maximum degree of reductions” or otherwise permitting increases in the source’s emissions.
4. Whether EPA exceeded its statutory authority or acted unlawfully by removing the requirement of federal enforceability from the regulatory definition of “potential to emit” at 40 C.F.R. section 63.2 through an “interim ministerial revision” without public notice and comment.

5. Whether the Final Rule is arbitrary and capricious because it removes the requirement of federal enforceability from the regulatory definition of “potential to emit” at 40 C.F.R. section 63.2 without providing an alternative means of ensuring enforceability.

6. Whether the Final Rule is arbitrary and capricious because it lacks factual support, ignores the concerns underlying the policy that it supersedes, and fails to address the rationale of the preceding policy rejecting an interpretation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412 that allows major sources to be reclassified as non-major “area” sources.

Dated: Feb. 25, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2021, I electronically filed the foregoing Petitioners' Non-Binding Statement of Issues with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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